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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,264	12/31/2003	Ian Legate	1865-US	8491
61574 7590 08/09/2007 LAW OFFICE OF BRUCE D. RUBENSTEIN 405 WALTHAM STREET, #404 LEXINGTON, MA 02421			EXAMINER TO, TUAN C	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 08/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,264	<b>Applicant(s)</b> LEGATE ET AL.	
	<b>Examiner</b> Tuan C. To	<b>Art Unit</b> 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4, and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klausner et al. (US 6748305B1) and in view of Seashore et al. (US 5916286A).

With respect to claim 1, Klausner et al. a system/method of storing data in a vehicle and evaluating said stored data. In Klausner et al, the vehicle data stored in a

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memory, and that said data can be acquired from a vehicle data bus (Klausner et al., abstract). The method of acquiring vehicle data is responsive to the execution of a telematics application on a local telematics unit. Such the telematics unit can be seen in figure 1 of Klausner et al. They are the units (111) through (116) which are connected via the data bus (108). The telematics application such as transmitting the data over data bus system is disclosed (Klausner et al., page 6, lines 39-47). Referring now to figure 3 of the patent, the claimed local vehicle library can be seen through the form of usage chip (101b), which includes a microprocessor (300) for data acquisition and analysis (Klausner et al, column 7, lines 7-11). In column 5, lines 8-23, Klausner et al. directs to the point "data going from these components to the data bus or data that can be retrieved from these components over the data bus", "data can be retrieved from memory 100". Therefore, Klausner et al. teaches "retrieving vehicle data bus information from a database". Also, in column 7, lines 26-35, Klausner et al. also teaches the following: "On microprocessor (300), data or information is extracted and interpreted", and that the interpreted data is also provided for the telematics application as discussed herein above.

Klausner et al. fails to disclose the following: "retrieving vehicle data bus information from a database that stores data bus information for a plurality of different makes of vehicles the retrieved vehicle data bus information being associated with the make of vehicle on which the telematics application is executed".

Seashore et al. teaches a portable automotive diagnostic tool as a local telematics unit that receives information from automotive computer of a vehicle. The

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vehicle makes are stored in the flash memory (34) (Seashore et al., figure 3; column 3, lines 9-11; column 7, lines). The flash memory stores automobile code for each vehicle type. The vehicle data regarding a type of vehicle is retrieved in according to an input from user (Seashore et al., column 8, lines 28 and 29).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Klausner et al. to include the teachings of Seashore et al. so that a mechanic is capable to retrieve a diagnostic test or a vehicle information of a service vehicle that needed to be repaired.

With regarding to claims 9, and 11-13, Klausner et al. teaches a method of acquiring vehicle data. In Klausner et al., there is included a system/method of storing data in a vehicle and evaluating said stored data. In Klausner et al, the vehicle data stored in a memory, and that said data can be acquired from a vehicle data bus (Klausner et al., abstract). The method of acquiring vehicle data is responsive to the execution of a telematics application on a local telematics unit. Such the telematics unit can be seen in figure 1 of Klausner et al. Thus, Klausner et al. teaches "executing a telematics application on a local telematics unit operatively connected to a vehicle".

Klausner et al. teaches "requesting vehicle parameter data by the telematics application". As set forth in column 5, lines 24-28, the vehicle data in the memory (100), and that the data can be retrieved in response to the a request (see column 2, lines 39-43, the memory medium can input and analyze data on the data bus and can request data from the bus devices for storage and reconstruction). Klausner et al. further teaches "querying the database to retrieve data bus information for a particular vehicle

make that corresponds to the vehicle; and extracting vehicle data from a vehicle data bus using the vehicle data bus information". Klausner et al., the vehicle databus information stored in the memory medium (column 2, lines 34-38) can be retrieved according to a particular vehicle. Such the vehicle data bus information can be extracted using the data bus (column 5, lines 8-14).

Klausner et al. fails to include "accessing, responsive to the step of requesting vehicle parameter data, a database that stores data bus information for a plurality of different vehicle makes".

Seashore et al. teaches a portable automotive diagnostic tool as a local telematics unit that receives information from automotive computer of a vehicle. The vehicle makes (claim 9 recited different vehicle makes) are stored in the flash memory (34) (Seashore et al., figure 3; column 3, lines 9-11; column 7, lines). The flash memory stores automobile code for each vehicle type. The vehicle data regarding a type of vehicle is retrieved in according to an input from user (Seashore et al., column 8, lines 28 and 29). This shows that user can access a vehicle parameter data to follow the user's request.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Klausner et al. to include the teachings of Seashore et al. so that a mechanic is capable to retrieve a diagnostic test or a vehicle information of a service vehicle that needed to be repaired.

With regard to claim 4, Klausner et al. further teach that the telematics application includes a vehicle diagnostics application (Klausner et al, column 6, lines 39-47).

With regard to claim 10, Klausner et al. disclose that the vehicle information can be passed to a protocol driver, wherein such protocol driver is a CAN (Klausner et al., column 6, lines 39-41).

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klausner et al. (US 6748305B1), Seashore et al. (US 5916286A) as applied to claims 1 and 4, and further in view of Trsar et al. (US 20050021294A1).

Klausner et al. and Seashore et al. fails to disclose the following: "establishing a wireless link to a remote server, accessing a vehicle database with the remote server, and downloading vehicle data bus information to the local vehicle library from the remote database".

The secondary reference to Trsar et al. is directed to a diagnostics service system/method including a data processing system (100), wherein said processing system includes a communication interface (218) coupled to bus (202). Communication interface may be local area network (LAN) card, wireless links, etc (Trsar et al, paragraph 0027, lines 8-11). The communication interface (218) is provided for establishing a wireless link to the remote server (230) through the Internet (227) (Trsar et al., paragraph 0029). In addition, the communication interface (218) is configured to send and receive electrical, electromagnetic or optical signals. Therefore, the communication interface (218) associates with bus (202) to gain advantage in

accessing a vehicle database (storage device 210) with the remote server, and transferring vehicle information via the bus (202) to the processing system (100) from the server (230) (Trsar et al., figure 1C; page 3, paragraph 0028).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Klausner et al. to include the teachings as taught by Trsar et al. to gain advantage therefore (i.e., an authorized person is able to diagnose a vehicle system of a motor vehicle by collecting vehicle information via wireless connection to the Internet. The required parts needed for a replacement may be easily found after making the connection to the Internet).

With regard to claim 3, Klausner et al. disclose that the vehicle information can be passed to a protocol driver, wherein such protocol driver is a CAN (Klausner et al., column 6, lines 39-41).

While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

### ***Response to Arguments***

In response to the applicant's amendment and remarks dated on 05/21/2007, the 112(1) and (2) rejection has been withdrawn. The rejection under 35 U.S.C 103(a) can not be withdrawn because the cited prior arts, as in a combination, suggests the claimed limitations.

First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies



(i.e., responsive to the requests for vehicle parameter data from the application program) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Second, to establish a prima facie case for obviousness under 35 U.S.C 103(a), the examiner has provided the second reference to Seashore et al. as teaching a a portable automotive diagnostic tool as a local telematics unit that receives information from automotive computer of a vehicle. As user can requests vehicle parameter from a telematic application via the diagnostic tool. For example, in figure 4, step 44, the user can select automobile make and model from the aumomobile diagnostic tool. In addition, Seashore et al. teaches vehicle data bus information from a database that stores data bus information for a plurality of different types of data buses. As set forth in column 4, lines 45-56, the mobile diagnostic tool (14) is used to access information from the automotive computer (12) using port (13). The automobile diagnostic tool interfaces with the automotive computer to retrieve information pertaining to the operating status (error coce) of the automobile. The automobile diagnostic tool interfaces with the automotive computer to retrieve information from sensor devices. This shows that data retrieved come from different data buses.

Third, in response to the applicant's that the previous office action does not identify any aspect of Klausner or Seashore, the details of the rejection to claim 9 has been provided.

For that reasons, the application is now rejected based on the previous cited prior art.

### ***Conclusions***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan C To whose telephone number is (571) 272-6985. The examiner can normally be reached on from 8:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner,

A handwritten signature in black ink, appearing to read 'Tuan C To', is written over a horizontal line.

Tuan C To

July 13, 2007